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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re S.E., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

S.N.,

Defendant and Appellant.

G050778

(Super. Ct. No. DP022713)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Andre  
Manssourian, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

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In August 2014, at the jurisdiction and disposition hearing, the juvenile court declared S.E. a dependant pursuant to Welfare and Institutions Code section 300, subdivision (b), removed him from S.N.'s (Mother's) custody, and ordered reunification services. (All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.) Mother's sole contention in this appeal is that there was insufficient evidence she has an unresolved substance abuse problem. She seeks reversal of the court's order that she participate in substance abuse related family reunification services. We find her argument lacks merit and affirm the court's order.

#### FACTUAL & PROCEDURAL BACKGROUND

In June 2014, Orange County Sheriff deputies placed 11-year-old S.E. into protective custody based on allegations of neglect after they arrested his mother. S.E. is autistic and his biological father is deceased. S.E. was placed in a group home.

The petition alleged that on June 22, 2014, at 12:46 a.m., Mother and Paul R. (hereafter Paul)<sup>1</sup> were engaged in physical and verbal domestic violence while S.E. was home. Mother had filed a false police report several hours earlier claiming Paul stole a vehicle. Police found a glass pipe and three bags of methamphetamine in Mother's purse. Mother was arrested for possession of a controlled substance, controlled substance paraphernalia, spousal battery, and falsely reporting a crime. It was further alleged Mother had an unresolved substance abuse problem and there were repeated instances of domestic violence. Law enforcement had been called to her home on numerous

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<sup>1</sup> Paul was once married to Mother, and is S.E.'s ex-stepfather. He is not a party to this appeal.

occasions. In 2012, Mother complied with her case plan to address the domestic violence issues. In 2013, Mother signed three different safety plans with a social worker, in which she agreed to protect S.E. from domestic violence.

The petition discussed the prior dependency cases. It alleged that in 2011 S.E. was declared a dependent child of both the Los Angeles and Orange County juvenile courts. The petition elaborated that in September 2011 the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging Mother and Paul “engaged in a violent altercation in the presence of the child in which [Paul] repeatedly struck [Mother’s] head and mouth with [his] fists inflicting pain to the mother’s head and a bleeding laceration and swelling to [her] lip; [Paul] choked [Mother] inflicting marks and pain to [her] neck, causing [her] to experience difficult breathing; [Paul] and [M]other engaged in a physical struggle inflicting bruises to [her] arms and causing [her] to fall onto a bed; [Mother] scratched, bit, kicked and threw a glass at [Paul], inflicting marks to [his] arms . . . .” The petition stated Paul was arrested on charges of spousal abuse and S.E. remained in Mother’s care under the court’s supervision.

The petition also disclosed that in March 2012 DCFS filed a petition alleging Mother was unable to care for S.E. because she had mental and emotional problems, including suicidal and homicidal ideation. Mother reported she had a history of depression. Mother was hospitalized and S.E. was placed in protective custody for two weeks after police discovered Mother pacing and yelling while S.E. was sitting on the floor. Mother threatened to kill herself and S.E.

The petition further alleged S.E. was returned to Mother’s custody after she was released from an involuntary psychiatric hold. The case was transferred to Orange County and eventually terminated after the juvenile court determined Mother had complied with her case plan, completed a medical evaluation, and addressed the issues of

domestic violence. S.E. was safe in Mother's care for one year of family maintenance services.

On July 30, 2014, Orange County Social Services Agency (SSA) social worker Daniel McKinnis prepared a report and recommended the court sustain the petition, declare dependency, and offer Mother reunification services. McKinnis reported S.E. had limited verbal skills and was unable to give a statement about what happened. Mother invoked her Fifth Amendment constitutional rights and refused to speak about the case. However, McKinnis met with Mother in early July to discuss services. He reported she arrived 45 minutes late, "appeared disheveled," and was "disorganized, confused, and histrionic." When McKinnis asked Mother to come back another day, she agreed. During their brief discussion, Mother attempted to talk about the factual allegations of the underlying case, and McKinnis repeatedly said he could not speak with her about anything other than services. When Mother persisted, McKinnis ended the meeting. He noted Mother's speech "was very pressured and her thoughts were disjointed and difficult to follow." He gave her a 30-day bus pass and rescheduled the meeting.

McKinnis stated that when he met with Mother again he gave her a referral for drug testing. Mother again attempted to discuss the facts of the underlying case and that she was a victim. McKinnis reminded Mother that he could not speak with her about the facts of the case, and after attempting for approximately 10 minutes to redirect the focus of the conversation, he ended the interview. McKinnis reported he noticed Mother's speech was again "very pressured and her thoughts were disconnected and it was difficult to follow her thought process."

McKinnis reported that approximately two weeks after their meeting, Mother asked for help in creating a safety plan and she wanted to file a restraining order against Paul. McKinnis told Mother he would be unable to help her because she had invoked her Fifth Amendment rights and a safety plan would require them to discuss the domestic violence allegations. Mother accused McKinnis of being a criminal, being

against her, and not helping her. McKinnis restated he could and wanted to discuss services. When Mother refused to stop speaking about the underlying case, McKinnis ended the interview. McKinnis stated that during this conversation Mother was very difficult to understand and her thoughts were hard to follow.

In his report, McKinnis included a summary of what occurred during social worker Edja Kurtovic's jail interview with Mother on June 23. Relevant to this appeal on the limited issue of Mother's alleged substance abuse, McKinnis reported Mother denied any substance abuse history. Mother told Kurtovic the methamphetamine and glass pipe found in her purse did not belong to her. She stated Paul "planted" items in her purse while she was talking to the deputies before her arrest. She denied having a mental health diagnosis, but admitted that she took anti-depressant medication for a period of six months and then stopped.

Mother was allowed to visit S.E. for two hours, three times a week. She had many positive visits but "also struggled with being appropriate during her visits and ha[d] become argumentative with staff on at least two occasions, cursed at staff members in front of other children, and refused to leave the premises on another occasion."

In his assessment of the case, McKinnis opined Mother had an unresolved substance abuse problem, and unresolved mental health problems, and she remained in a relationship involving domestic violence. McKinnis stated that when Mother was arrested, the police discovered 3.64 grams of methamphetamine (an amount indicative of regular use) and a used glass pipe in her purse. Mother provided one negative drug screen but had missed two other required tests. Mother claimed she thought she only had to test one time despite being given verbal and written instructions to the contrary. Based on this evidence, McKinnis concluded Mother had an unresolved substance abuse problem and she would benefit from drug treatment, 12-step meetings, and drug testing as part of her reunification plan.

McKinnis filed an addendum report on August 14, 2014. Mother failed to drug test on five dates in July 2014. She only had one negative test taken on July 10, 2014.

On August 14, 2014, the court held a hearing. Mother's counsel requested a continuance because there was an outstanding discovery request and evidence he needed to review. Counsel stated Mother disagreed with continuing the case and wished to represent herself. The court asked Mother what she would like to do. Mother requested to represent herself and for the case to be dismissed. She denied being under the care of a mental health professional, but admitted she was taking anti-depressant drugs. She denied ever using drugs and stated she had an occasional glass of wine or beer. The court commented Mother was moving around a lot, interrupting the court, and she looked "fidgety." The court wondered if she was agitated or nervous and it asked Mother why she kept interrupting the court.

Mother replied she was having a horrible time because her son was taken away. She stated her son wanted to come home and cries. She added the social worker was lying, "scrutiniz[ing]," and manipulating her. Mother stated she was being treated unfairly and it was making her "very emotional and devastated." The court denied Mother's request to represent herself, stating "I don't find you legally competent in this area of law at all. [¶] And I do have questions about your mental competency based on your incoherent, rambling answers to my questions. I don't find that you are fit to represent yourself in this matter." The court continued the hearing.

On August 28, 2014, McKinnis filed a second addendum report stating he spoke to Mother on the telephone about her drug testing. She missed all the scheduled drug testing dates since July 10. Mother stated she was too busy to drug test. McKinnis explained a missed test was considered a positive test and that testing was important. He encouraged her to start testing and Mother agreed. McKinnis calculated Mother missed a total of eight scheduled drug tests (from July 14 to August 12).

McKinnis testified at the hearing. When questioned about the allegation Mother had an unresolved substance abuse problem, McKinnis stated he looked into this allegation by reviewing the police report because he was not able to interview Mother regarding this issue. McKinnis added Mother had tested once since S.E.'s detention, and she had missed between eight to 10 tests. He concluded this evidence supported the conclusion Mother had an unresolved substance abuse problem.

On cross-examination, McKinnis admitted the police report did not indicate Mother was under the influence of methamphetamine when she was arrested. He believed the fact she possessed drugs and paraphernalia was evidence she abuses methamphetamine. McKinnis stated he was unsure if Mother was being charged for all the crimes she had been arrested for.

During a discussion about S.E.'s services, the court stopped the proceedings. It stated, "The court has noticed for the last few minutes [Mother] has gotten increasingly agitated and started twitching and . . . every time I looked over she was engaging the interpreter in conversation rather than simply listening to the interpreter interpret the proceedings for her." The court asked Mother to stop having a side conversation with the interpreter.

The hearing resumed and McKinnis was cross-examined about his training in identifying the signs of substance abuse. McKinnis stated he had attended several classes and the signs of drug abuse included paranoia, dilated pupils, erratic behavior, "jerky" bodily movements, and being overly emotional. McKinnis stated he had observed Mother exhibiting all those behaviors and, therefore, he was concerned she was abusing methamphetamine. He added the prior dependency reports from Los Angeles indicated Mother was diagnosed with depression and there was an incident where a methamphetamine pipe was found in Mother's bathroom.

McKinnis admitted he did not have any reason to believe S.E. was exposed to drug use or had access to drugs. S.E. was asleep during the incident that resulted in Mother's arrest.

Mother testified she did not use methamphetamine. She asserted Paul planted the drugs in her purse because he used drugs. Mother claimed that in March 2013, Paul planted drugs on her by putting a glass pipe in her bathroom and he filmed her grabbing the pipe and throwing it outside. He showed the video to police and claimed the pipe was hers. In her prior dependency case, Mother's services included drug and alcohol testing.

Mother stated she was drug testing until she learned from McKinnis that he was recommending S.E. be detained despite her being "100 percent in compliance." Mother stated McKinnis told her that his recommendation was based on evidence of domestic violence. Mother explained, "At that time I realized that whatever I fix something else is going to come up. And I said that, therefore, I will no longer cooperate and the social worker wasn't complying with any of his coworkers and he did nothing for reunification." The court stated it did not understand her response and asked her to listen to the question and answer it again.

Mother replied she was "doing all [her] drug tests" until she heard McKinnis say he was recommending detention. She recalled telling McKinnis she would comply with drug testing only if S.E. was returned to her first. She admitted, "And I am stubborn, if they're not doing anything why should I do anything."

Mother also testified about the drugs and paraphernalia found in her purse. Mother explained she was talking to the police outside the house and Paul was inside the house. Mother claimed she told the police to not let Paul near her purse but they did not take her seriously. When the police brought her purse outside she saw her wallet and cell phone were missing, and Paul had planted drugs and the pipe inside her purse. Mother claimed that when she was in jail, Paul emptied her bank accounts.



On cross-examination, counsel asked Mother why she was not drug testing. She replied, “I said I will only comply if they comply with me also. The court order wasn’t only for me, it was for them, too. When I see that they do nothing for unification, if they don’t respect the court order, why should I.”

During closing arguments, county counsel asked the court to sustain the petition and follow the social worker’s recommendation. He also asked the court to order an Evidence Code section 730 evaluation (hereafter 730 evaluation) to help plan appropriate services for Mother. Minor’s counsel agreed with county counsel and asked that visits be suspended if Mother continued to argue with staff. Mother’s counsel argued there was insufficient evidence to sustain any of the petition related to drug use. He argued there was no evidence of drug use or that there was a risk drug abuse was causing S.E. harm.

The court issued the following ruling at the hearing: “[Mother] you need to be more cooperative with [SSA]. We need to get you to test. We want you to submit to an evaluation so that we can eliminate any mental health issues that some people suspect might be present. We want to be able to best equip you with the tools to take care of [S.E.] in the long run. [¶] I know you want your child back today. The court is not ready to do that today. I need you to, rather than be stubborn, as you said, with [SSA] and the social worker, I need you to be more cooperative with them. [¶] And you’re nodding your head that you won’t do that, so I won’t waste my time, then, giving you any more advice.” The court ruled the allegations in the petition were true and it approved the social worker’s case plan.

Mother’s services include substance abuse treatment and testing, a 12-step program, a domestic violence program, counseling, a 730 evaluation, and parenting education. Mother exited the courtroom in the middle of the court making its orders. The court granted Mother’s request for a temporary restraining order against Paul.

## DISCUSSION

Mother argues the juvenile court erred in finding she had an unresolved substance abuse problem. She does not appeal the court's decision to find jurisdiction under section 300, subdivision (b), declare S.E. a dependent, remove him from her custody, or order reunification services (but only non-substance-abuse related services). Mother correctly recognizes that only one allegation against her is needed for the court to take jurisdiction over S.E. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) She asks this court to reach the merits of her appeal because the substance abuse allegation resulted in the court ordering additional substance abuse related services. We agree that for this reason the argument is not moot. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*).)

### *A. Section 300, subdivision (b), and the Standard of Review*

A child may be ordered a dependent of the juvenile court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b).)

“‘The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.] ‘Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300’ at the jurisdiction hearing. [Citation.] ‘On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]’ [Citation.] [¶] Thus, ‘we must uphold the court’s [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings.

[Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citations.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

*B. Analysis*

After carefully reviewing the record, we find there was substantial evidence to support the court’s order. First, Mother had 3.62 grams of methamphetamine in her purse. Mother did not dispute this quantity was indicative of regular use. A used methamphetamine pipe was also found in her purse, further supporting the inference she used methamphetamine. She told the police the items belonged to Paul but they did not believe her and still arrested her. Because Mother asserted her Fifth Amendment rights, the social worker was unable to question Mother about the police report or further investigate the circumstances of her arrest. The court could reasonably infer Mother possessed the drugs and used pipe because she abuses drugs.

Second, the social worker asked Mother to submit to drug tests. She was told a missed test would count as a positive test. She was encouraged and instructed repeatedly to submit to drug tests. She tested once, but then missed between eight to 10 tests. It was reasonable to infer Mother missed drug tests because she knew the tests would be positive. She was not unfamiliar with the process, having been ordered in the prior dependency proceedings to participate in drug and alcohol testing. Although Mother offered several different excuses for failing to test (such as being too busy and too stubborn), the court was not required to believe her. We may not reweigh the court’s credibility determination. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)<sup>2</sup>

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<sup>2</sup> We note Mother’s counsel makes the argument “[SAA] did not have any tests to show that [she] was under the influence of methamphetamine.” This argument does not help Mother’s case. The only reason SSA did not have any tests is because Mother refused to take them. This was not a failure of proof. Mother’s failure to cooperate suggests she had something to hide. It is certainly not evidence suggesting she was drug free.

Third, McKinnis observed Mother showed other outward manifestations and symptoms commonly exhibited by people who abuse methamphetamine. She showed signs of paranoia because she believed the social worker and the group home staff were trying to hurt her and were out to get her. As explained in more detail in the factual summary, Mother also exhibited overly emotional, erratic, and confused behavior during visits with S.E., when speaking with McKinnis, and in the courtroom. The court also observed Mother was fidgety, agitated, twitching, and highly emotional. On appeal Mother argues her emotional, uncooperative, and often irrational behavior should be attributed to the trauma of having her son taken away. However, it is just as likely her behavior was consistent with someone abusing methamphetamine.

As mentioned above, we will not reweigh the court's credibility findings. We review the record in the light most favorable to the court's findings, not the light most favorable to Mother's self-serving version of the events. We are mindful of the fact Mother does not challenge the allegations she has unresolved mental health issues that result in her having delusional and illogical thought processes. Her credibility was certainly at issue for this additional reason.

Mother's opening brief contains numerous cases holding *drug use* cannot alone support a jurisdictional finding unless there is evidence of *drug abuse* negatively affecting a parent's ability to care for his or her child. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 764.) These cases do not assist her. In the juvenile court, Mother insisted there was no evidence the drugs belonged to her and she *never* used drugs. She did not assert she used but not abused drugs. Mother's appeal is narrowly tailored to seek reversal of the court ordered drug-related reunification services due to the alleged lack of evidence she used drugs. She does not challenge the court's jurisdictional finding that she was engaging in dangerous parental behaviors and failed to protect her son. We conclude Mother's refusal to cooperate with drug testing and her highly agitated behavior could reasonably be attributed to drug abuse, mental illness, or a combination of both.

Accordingly, the juvenile court properly ordered services that fit the unique circumstances of this family. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1007 [services must be designed to remedy problems leading to loss of custody].)

DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.